



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

W. Tucker Keene
Communications Director
Republican Party of New Mexico
5150 San Francisco Road, NE, #A
Albuquerque, NM 87109

APR 04 2019

RE: MUR 7217

Dear Mr. Keene:

This is in reference to the complaint you filed with the Federal Election Commission on February 17, 2017, alleging violations of the Federal Election Campaign Act of 1971, as amended. Based on that complaint, on April 24, 2018, the Commission found that there was reason to believe that Merrie Lee Soules and Soules for US Congress and Laura Garcia in her official capacity as treasurer violated 52 U.S.C. § 30114(c)(2) and 11 C.F.R. §§ 100.93(c)(2) and 113.5(b), and instituted an investigation of this matter. After considering the circumstances of this matter, the Commission closed the file in this matter on March 26, 2019.

The Factual and Legal Analysis, which more fully explains the basis for the Commission's decision, is enclosed. A Statement of Reasons further explaining the basis for the Commission's decision may follow.

Documents related to the case will be placed on the public record within 30 days. *See* Disclosure of Certain Documents in Enforcement and Other Matters, 81 Fed. Reg. 50,702 (Aug. 2, 2016).

The Federal Election Campaign Act of 1971, as amended, allows a complainant to seek judicial review of the Commission's dismissal of this action. *See* 52 U.S.C. § 30109(a)(8). If you have any questions, please contact me at (202) 694-1650.

Sincerely,

A handwritten signature in black ink, appearing to read "Lynn Y. Tran", is written over a horizontal line.

Lynn Y. Tran
Assistant General Counsel

Enclosure
Factual and Legal Analysis

FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENTS: Merrie Lee Soules
Soules for US Congress and Laura Garcia
in her official capacity as treasurer

MUR 7217

I. INTRODUCTION

The Complaint alleges that Aero Newton, Inc. ("Aero Newton") made, and Merrie Lee Soules, Soules for US Congress, and Laura Garcia in her official capacity as treasurer¹ ("the Committee") accepted, a prohibited in-kind corporate contribution in the form of non-commercial air travel in violation of the Federal Election Campaign Act of 1971, as amended (the "Act"), and Commission regulations.² Soules and the Committee implicitly acknowledge that she and her staff accepted travel on a non-commercial airplane, but they argue that any violation of the Act or Commission regulations was unintentional and any associated in-kind contribution was from the pilot, Brent E. Shelley, rather than a corporate entity.³ Based on the available information, the Commission finds reason to believe that Soules and the Committee violated 52 U.S.C. § 30114(c)(2) and 11 C.F.R. §§ 100.93(c)(2) and 113.5(b).

II. FACTS

Soules was a House candidate in the Second Congressional District of New Mexico during the 2016 election cycle, and the Committee was her principal campaign committee.⁴ The Complaint alleges that Soules and a Committee staffer used a non-commercial airplane owned

¹ Maryann Hendrickson was the Committee's treasurer at the time the complaint was filed. The Committee filed a revised Statement of Organization naming Garcia as treasurer on May 25, 2017.

² Compl. at 2-3 (Feb 17, 2017).

³ Soules Resp. (May 18, 2017).

⁴ Statement of Organization, Soules for US Congress (Feb. 1, 2016).

1 by Aero Newton to fly to several campaign events on Election Day, November 8, 2016.⁵ The
2 Complaint attaches photographs of Soules and others near a single-propeller-engine Cessna
3 Model 182H ("airplane").⁶

4 Soules implicitly admits traveling on the non-commercial airplane, but argues that the
5 travel should be classified as an in-kind contribution from Shelley, rather than a prohibited
6 corporate contribution. She explains that Shelley was allocated flight time as a member of the
7 Aero Flight Club of Las Cruces, Inc. ("Club"), a non-profit flight club incorporated in New
8 Mexico.⁷ Soules states that the Committee would report the corresponding in-kind contribution
9 "on [their] next report," and she was taking steps to close the Committee's campaign account.⁸
10 The Committee has not reported contributions or disbursements with regard to the airplane
11 travel.

12 The information available to the Commission indicates that the airplane Soules and the
13 Committee used is leased by the Club, which has exclusive use of the airplane. The available
14 information also indicates that Shelley had access to the plane as a member of the Club and used
15 the plane to fly Ms. Soules and her associates travel throughout the state. The Committee's
16 disclosure reports do not show any contributions from Shelley, the Club, or Aero Newton, Inc.

⁵ Compl. at 1-3. The Complaint is unclear as to whether Soules traveled with one staff member or two. The Complaint identifies one other staff member by name, but the pictures attached to the Complaint show a total of four people, including the pilot Shelley.

⁶ Compl. at 2, Attach. A; *see also* CESSNA 1965 182H SKYLANE - PLANE & PILOT MAGAZINE, <http://www.planeandpilotmag.com/article/cessna-1965-182h-skylane> (last visited Aug. 10, 2017).

⁷ Soules Resp.

⁸ *Id.*

1 **III. LEGAL ANALYSIS**

2 The Honest Leadership and Open Government Act of 2007 (“HLOGA”) amended the
3 Act to prohibit House candidates from making any expenditure for non-commercial air travel.⁹
4 Commission regulations similarly prohibit House candidates from accepting in-kind
5 contributions of non-commercial air travel.¹⁰ The prohibition on House candidates’ non-
6 commercial air travel applies to any “campaign traveler,” which includes “any candidate
7 traveling in connection with an election for Federal office or any individual traveling in
8 connection with an election for Federal office on behalf of a candidate or political committee.”¹¹

9 During the 2016 election cycle, the Act prohibited any person from making a contribution
10 to any candidate or the candidate’s authorized committee with respect to a federal election
11 which, in the aggregate, exceeded \$2,700.¹² No candidate, officer, or employee of a political
12 committee shall knowingly accept any contribution that exceeds the contribution limits.¹³ In
13 addition, corporations are prohibited from contributing to candidates’ authorized committees,
14 and a candidate’s committee may not knowingly accept prohibited corporate contributions.¹⁴

⁹ 52 U.S.C. § 30114(c)(2) Two exceptions to the prohibition exist—travel on government-operated aircraft and travel on aircraft owned or leased by the candidate—but neither exception applies here. 52 U.S.C. § 30114(c)(2)(B), (3).

¹⁰ 11 C.F.R. §§ 100.93(c)(2), 113.5(b). Commercial travel is defined as travel aboard “an aircraft operated by an air carrier or commercial operator certificated by the Federal Aviation Administration, provided that the flight is required to be conducted under FAA air carrier safety rules....” 11 C.F.R. § 100.93(a)(3)(iv)(A); *see also* 11 C.F.R. §§ 100.93(a)(3)(v) (defining “non-commercial travel” as travel that is not commercial travel)..

¹¹ *Id.* § 100.93(a)(3)(i)(A).

¹² 52 U.S.C. § 30116(a)(1)(A). A contribution “includes any gift, subscription, loan, advance, or deposit of money or anything of value made by any person for the purpose of influencing any election for federal office.” *Id.* § 30101(8)(a)(i).

¹³ *Id.* § 30116(f).

¹⁴ 52 U.S.C. § 30118(a); Advisory Op. 2010-11 (Commonsense Ten) (citing *Citizens United v. FEC*, 558 U.S. 310, 359 (2010)); *Carey v. FEC*, 791 F. Supp. 2d 121 (D.D.C. 2011).

1 Soules implicitly admits that she and her staff were "campaign travelers" by
2 acknowledging that they traveled by airplane to "reach as many people as possible on election
3 day."¹⁵ Neither the Club nor Shelley are air carriers or commercial operators "certificated by the
4 Federal Aviation Administration," thus, the travel on the airplane was non-commercial travel.¹⁶
5 Further, Soules's argument that her Committee was permitted to accept flights from Shelley
6 suggests that she does not understand that, subject to exceptions not applicable here, House
7 candidates are prohibited from accepting non-commercial air travel from *any* source, individual
8 or corporate.

9 The provision of such non-commercial travel is considered an in-kind contribution to the
10 Committee from the "service provider,"¹⁷ which Commission regulations define as either the
11 owner, lessor, or other individual who obtains the legal right to use the aircraft.¹⁸ The available
12 information is insufficient to determine if the service provider of non-commercial travel to
13 Soules and the Committee is the Club or Shelley, and consequently, whether the contribution is a
14 prohibited corporate contribution from the Club or a potentially excessive contribution from
15 Shelley.

16 Regardless of the identity of the contributor, the value of the resulting in-kind
17 contribution is the "fair market value of the normal and usual charter fare or rental charge for a

¹⁵ See Soules Resp. at 1; 11 C.F.R. §§ 100.93(a)(3)(i)(A), 100.93(a)(3)(ii).

¹⁶ The Federal Aviation Administration's Airline Certification Information database contains no record of a certification for "Aero Flight Club of Las Cruces, Inc." or any similarly named entity. See FEDERAL AVIATION ADMINISTRATION AIRLINE CERTIFICATE INFORMATION, <http://av-info.faa.gov/OperatorsName.asp> (last visited Jul. 19, 2017).

¹⁷ See 11 C.F.R. § 113.5(d).

¹⁸ See 11 C.F.R. § 100.93(a)(3)(ii); see also MUR 6421 (Benishek).

1 comparable aircraft of comparable size.”¹⁹ Although it is not clear where Soules and her staff
2 flew with Shelley, the Complaint alleges that they flew to three locations and traveled
3 approximately eight hours.²⁰ Based on this allegation and publicly available hourly rental rates
4 for a similar plane, the fair market value of the flights is estimated to be between \$1,920 and
5 \$3,000.²¹

6 Accordingly, the Commission finds reason to believe that Soules and the Committee
7 violated 52 U.S.C. § 30114(c)(2), 11 C.F.R. § 100.93(c)(2), and 11 C.F.R. § 113.5(b) by
8 accepting prohibited non-commercial travel.

¹⁹ 52 U.S.C. § 30114(c)(1)(2); 11 C.F.R. § 100.93(c)(1); *see also* MUR 6421 (Benishek).

²⁰ Compl. at 2.